



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Travis Co.

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-2595

Re: Authority of the Comptroller
to pass the account of Texas
Prison System Audit for pay-
ment without the approval of
the State Board of Control.

We have your letter as follows:

"I am submitting Texas Prison System Audit
No. 4812. You will please advise as to whether
or not I can pass this account for payment with-
out the approval of the State Board of Control.

"The State Board of Control has refused to
approve this account for the reason that no pur-
chase contract was let by them."

Article 1154 of Vernon's Revised Civil Statutes
is as follows:

"All contracts for the purchase of mater-
ials, supplies, equipment and sustenance for
the Prison System shall be upon competitive
bids, except as hereinafter provided. Where
the amount to be expended is in excess of the
sum of \$2,000.00 the purchase shall be made
upon sealed competitive bids received by the
manager after ten days advertisement in some
paper or papers of general circulation in this
State. Where the amount of the purchase is
less than \$2,000.00 the manager shall, before
letting any contract for such purchase, ask

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and receive not less than three sealed competitive bids for such contract. In cases of emergency the contemplated expenditure does not exceed \$500.00, the purchase may be made without (necessity) for competitive bids."

Article 634, Revised Civil Statutes, is as follows;

"The Board of Control shall purchase all the supplies used by each Department of the State Government, including the State Prison System, and each eleemosynary institution, Normal school, Agricultural and Mechanical College, University of Texas, and each and all other State Schools or Departments of the State Government heretofore or hereafter created. Such supplies to include furniture and fixtures, technical instruments and books, and all other things required by the different departments or institutions, except strictly perishable goods."

The contract under consideration was executed by the Prison System with the Cameron Can Machinery Company for the materials and installation of a canning plant at the State Farm industries. The System, no doubt, acted in pursuance of Article 6168n, above quoted, and the Board of Control perhaps declined to approve the contract because of Article 634 of the statutes.

The language of Article 6168n, "all contracts for the purchase of materials, supplies, equipment and sustenance for the Prison System," is broad enough to include the present contract. The language of Article 634, "such supplies to include * * * and all other things required by the different departments or institutions, except strictly perishable goods," is also broad enough to cover the present contract.

There is, therefore, an obvious conflict, and one or the other of the statutes must fall. The rule in such a case is that the last Act repeals or supersedes the prior Act in respect to the conflict.

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Article 6166n was enacted in 1927. Article 634 was amended in 1929 by H. B. 149 (2d C. S. 41st Leg. p. 30, Ch. 17). There is no express repealing clause in H. B. No. 149. There is always an implication of repeal, however, where, as here, the provisions of the two statutes relate to the same subject-matter, and are in such conflict as that both cannot stand at the same time. Furthermore, the emergency clause of H. B. No. 149 is quite significant. That clause is:

"The necessity for conforming and extending the exercise of the responsibilities to be assumed by the Board of Control to all institutions of the State government, creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days be suspended, and the rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

So that, you are advised that the contract in question should have been let by the Board of Control rather than by the Prison System, Article 634 being the latest Act, and you should not pass the account for payment.

APPROVED AUG 13, 1940

Very truly yours

ATTORNEY GENERAL OF TEXAS

George H. Sheppard
FIRST ASSISTANT
ATTORNEY GENERAL

By

Ocie Speer
Ocie Speer.
Assistant

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